



Missouri
Department of
Natural Resources

**Hazardous Waste Program
Brownfields/Voluntary Cleanup Section
Drycleaning Environmental Response Trust (DERT) Fund**

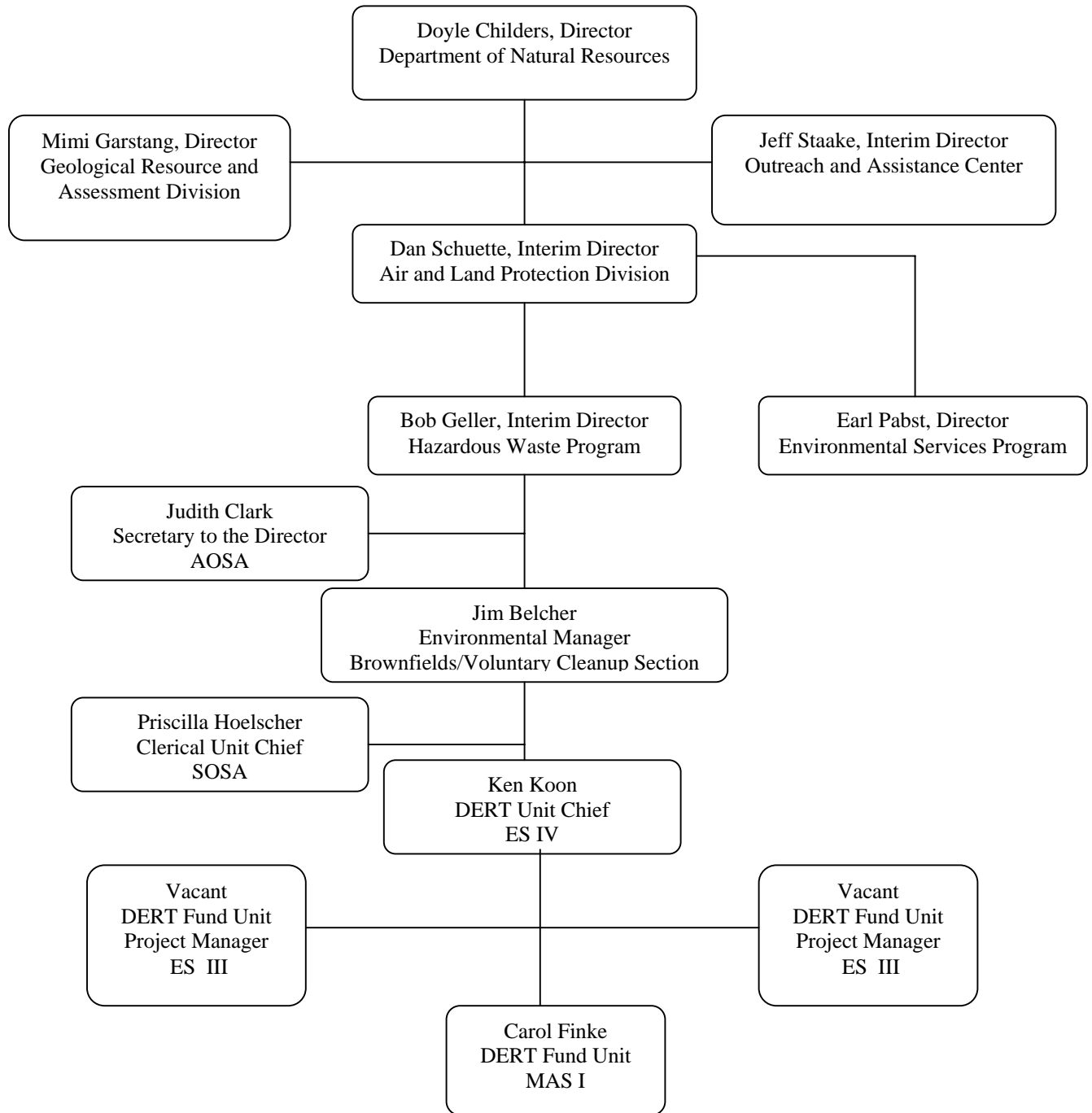
**Annual DERT Fund Program Report
Calendar Year 2004**

August 10, 2005

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**Air and Land Protection Division
Hazardous Waste Program
Brownfields/Voluntary Cleanup Section
Drycleaning Environmental Response Trust Fund
Organizational Chart**



The department's Geological Survey and Resource Assessment Division has a 0.5 FTE allocation under the DERT Fund. This allocation will not be used until FY06

DRYCLEANING ENVIRONMENTAL RESPONSE TRUST (DERT) FUND
PROGRAM REPORT
CALENDAR YEAR 2004

Introduction:

Senate Bill 577 established the DERT Fund and Section 260.960, Revised Statutes of Missouri (RSMo) authorized the DERT Fund. The DERT fund provides funding for the investigation, assessment, and remediation of releases of solvents from dry cleaning facilities. The DERT Fund is a state fund and is to be administered by the Hazardous Waste Program pursuant to rules promulgated by the Hazardous Waste Management Commission (HWMC).

Operators of active dry cleaning facilities are required to register with the Missouri Department of Natural Resources, as outlined in Section 260.915, RSMo. Each active and operating dry cleaning facility is required to pay an annual registration surcharge based upon the number of gallons of chlorinated or non-chlorinated solvents used during the calendar year, as outlined in Section 260.935, RSMo. This includes coin-operated dry cleaning facilities. Laundry facilities located in prisons, government entities, hotels, motels, and industrial laundries are specifically exempt from the requirements of this statute. All solvent suppliers who sell or provide solvent to a dry cleaning facility are required to pay the solvent surcharge fees to the department.

Section 260.955, RSMo, requires the department to provide an annual report to the General Assembly and the Governor regarding (1) receipts of the fund during the preceding calendar year and the sources of those receipts, (2) disbursements from the fund during the preceding calendar year and the purposes of those disbursements, (3) the extent of corrective action taken during the preceding calendar year, and (4) the prioritization of sites for expenditures from the fund.

Program Staff:

The DERT Fund consists of 4.5 Full Time Employees (FTE). This includes one Environmental Specialist (ES) IV that supervises the DERT Fund Unit and conducts oversight of dry cleaner investigations and remediation, two Environmental Specialist III's to conduct oversight of dry cleaner investigations and remediation, one Management Analyst Specialist (MAS) to conduct development of a database to track and plan expenditures and revenues, and a 0.5 position in the Geological Survey and Resource Assessment Division for geological review of work plans and reports. Minimal staffing allows the department to maximize the cleanup funding and services offered to participants of the DERT Fund.

Hiring started as soon as possible; however, Section 260.925, RSMo, did not allow expenditures from the DERT Fund until on or after July 1, 2002. General revenue contemplated during the crafting of Senate Bill 577, to hire staff to begin the rulemaking process was not authorized. A statewide hiring freeze in 2002 further delayed the process

of hiring until late 2002. The Environmental Specialist IV began on January 6, 2003, and the MAS I began on April 16, 2003. The two ESIII's will be hired in the spring of 2006.

Rule Development:

Section 260.905, RSMo, authorizes the HWMC to promulgate rules as necessary to carry out the program. A stakeholder work group of dry cleaning industry members, municipalities, consultants, and department staff convened in March 2003 to draft proposed rules. Even though the deadline of July 1, 2002 had passed to promulgate and adopt rules and regulations for the DERT Fund, the rule work group decided that drafting the proposed rules was warranted to achieve the intent of the statute to provide funding for dry cleaner solvent cleanups. This group met four times from March 2003 through September 2003 in meetings open to the public. The stakeholder group reviewed and commented on numerous drafts of the proposed rules during these meetings.

These proposed rules are necessary to describe the procedures for conducting the assessment, investigation, and remediation of contaminated active and abandoned dry cleaner sites and to help prevent future releases of dry cleaning solvents. These proposed rules also describe reporting requirements, eligible expenses to the DERT Fund, how to apply to the DERT Fund, and procedures for claims and appeals to the DERT Fund. The proposed rules were published in the May 17, 2004, Missouri Register. A copy of the proposed rules may be obtained from the Secretary of State Web site at <http://www.sos.mo.gov/adrules/moreg/current/2004/v29n10/v29n10b.pdf> (page 794-839) or by contacting this office at (573) 526-8913. The publication of these proposed rules opened the formal public comment period that lasted from the May 17, 2004, publication date until midnight on June 25, 2004.

On June 16, 2004, the HWMC held a public hearing on the DERT Fund proposed rulemaking (10 CSR 25-17.010 through 10 CSR 25-17.170). No comments were offered during the meeting. Written comments were received from Ms. Carol Eighmey of the Petroleum Storage Tank Insurance Fund and Mr. Bill Wilder of the Missouri Department of Transportation.

The department made changes to the rules based upon the comments provided. These changes clarified the rules and did not result in any additional requirements or costs to implement the rules as included in the proposed rules or fiscal notes published in the May 17, 2004, Missouri Register.

These 17 new rules will guide cleanup and mitigate releases of dry cleaning solvents from active and abandoned dry cleaner sites and provide financial recourse for such mitigation. These rules provide a regulated funding means to conduct cleanups where soil, groundwater, and surface water contamination results from releases by dry cleaning solvents at active and abandoned dry cleaning sites. The State Coalition for the Remediation of Drycleaners estimates that 75 percent of active dry cleaner sites are contaminated with dry cleaner solvent (www.drycleancoalition.org/survey).¹

Many abandoned dry cleaner sites remain unused and cannot be sold in a property transaction due to actual or perceived contamination problems. Active sites that have contamination or perceived contamination may also be difficult to sell.

The rulemaking will allow for better protection of human health and the environment from remediation of these contaminants or by reducing the exposure to the risks posed by the contamination. This will generate an economic benefit by allowing property transactions at active and former dry cleaning facilities and keeping or returning these properties to productive use. Without this rulemaking to establish the procedures for implementing these tasks, there will not be a mechanism for accomplishing environmental cleanups at active and former dry cleaning sites as envisioned by the original legislation. Many of these sites now sit abandoned due to contamination problems and without the rulemaking, sites would remain vacant and unused, as well as ineligible for remediation using the fund.

The Final Order of Rulemaking on the 17 DERT Fund rules was adopted by the HWMC during the August 5, 2004, HWMC regular meeting and was filed with the Joint Committee on Administrative Rule (JCAR) on August 24, 2004.

On September 16, 2004, a hearing was held before the Joint Committee of Administrative Rules on the Final Order of Rulemaking for the DERT Fund. The JCAR heard testimony from Associated Industries of Missouri (AIM) in opposition to the Order of Rulemaking. It was AIM's position that the Order of Rulemaking should be voided because the department did not have the Order of Rulemaking in place by the statutory deadline of July 1, 2002 (Section 260.905, RSMo).

The department and other parties, including three operators of dry cleaning facilities, gave testimony in favor of the Order of Rulemaking.

The JCAR introduced two motions during the hearing. The JCAR adopted the first motion to "disapprove the Order of Rulemaking," and a second motion to "recommend that this committee send a letter to the General Assembly, that would be addressed to the Speaker and to the President Pro Tem, to take the statutory structure and move those dates forward to keep that same five year time frame in place. Move those dates forward so that 2002 becomes 2007 on the rulemaking authority, the 2007 sunset date to 2012, etcetera, allowing DNR to come in and re-establish a set of rules that are probably going to look very similar to this."

Under Executive Order 97-97, this placed the Final Order of Rulemaking "in abeyance" until the General Assembly has had 30 legislative days to enact a concurrent resolution to disapprove the Order of Rulemaking. The resolution would then be subject to the Governor's approval or veto. The deadlines for the Final Order of Rulemaking are put on "hold" with the Secretary of State until the period is over or some action is taken.

HWP staff met with legal counsel and the Attorney General's Office on September 23, 2004, to determine a course of action in this matter. The surcharges are required by law and will continue to be collected. The DERT Fund can continue the direct costs of administration under Section 260.920 for the costs of surcharge collections, program development, and database development. The statute does not provide for the expenditures of monies without a rule in place. Therefore the three pilot projects started

to help develop the cleanup oversight and reimbursement procedures of the DERT Fund were suspended.

The department recommended that the HWMC withdraw the Order of Rulemaking for the DERT Fund rules filed with the JCAR on August 24, 2004. The HWMC approved the withdrawal of the DERT Fund rules. This withdrawal order was filed with the JCAR on December 23, 2004 and published in the February 1, 2005, *Missouri Register*.

The department reconvened meetings with the DERT Fund rule stakeholder work group to discuss the JCAR hearing, and discussed proposed rules for the program. These meetings were reconvened on November 9, 2004. These meeting concluded on June 23, 2005.

Current Legislation:

In the 2005 legislative session, Senate Bill 170 and Senate Bill 225 were passed and both bills included language regarding the DERT Fund. These bills made changes to the DERT Fund. This legislation makes several significant changes to the statute. These are discussed below.

1. The date for the Hazardous Waste Management Commission to promulgate rules is changed from July 1, 2002 to July 1, 2007.
2. The date for abandoned dry cleaning facilities to notify the DERT Fund is changed from July 1, 2004 to July 1, 2009.
3. The date of the sunset of the DERT Fund is changed from August 28, 2007 to August 28, 2012.
4. Dry Cleaning facilities that use non-chlorinated solvents are exempt from the statute.

Governor Matt Blunt signed Senate Bill 170 and Senate Bill 225 into law on July 6, 2005 and July 7, 2005, respectively.

The department briefed the Hazardous Waste Management Commission (HWMC) on legislation during its meeting of June 9, 2005. The department requested approval to post the Regulatory Impact Reports in accordance with House Bill 980 (2004) and begin the process of rulemaking. These reports will be posted for public comment for at least 60 days before the proposed rules are filed with the Joint Committee on Administrative Rules and the Secretary of State's Office.

The HWMC granted approval for the department to post the Regulatory Impact Reports to begin the process of Rulemaking for the DERT Fund. Copies of the proposed rules, stakeholder meeting notes, stakeholder comments, regulatory impact reports, small business impact statements, and additional information regarding the rulemaking can be accessed at www.dnr.mo.gov/alpd/hwp/dert/dert-rules-regs.htm

On July 17, 2005, the Regulatory Impact Reports were posted on the internet, in the St. Louis Suburban Journal and Kansas City Star Newspapers, the St. Louis and Kansas City Public Libraries, 27 other public libraries, letters of notification sent to all active dry cleaning facilities and solvent suppliers, distributed through public service announcements, and electronic mail sent to the DERT Fund and MRBCA stakeholder groups.

These reports will be posted for public comment for at least 60 days before the proposed rules are filed with the Joint Committee on Administrative Rules and the Secretary of State's Office. The anticipated date for filing the rules is October 3, 2005. The rulemaking would become effective May 31, 2006.

Receipts of the DERT Fund:

The Hazardous Waste Program is responsible for collection of all applicable surcharges from the facility and the solvent suppliers.

There are two sources of revenue for the DERT fund. The first is a dry cleaner facility annual registration surcharge paid by owners and operators of dry cleaning facilities (\$500, \$1,000, or \$1,500 based on solvent use). The second is a solvent surcharge paid by the solvent suppliers on a quarterly basis of \$8 per gallon of tetrachloroethylene (perchloroethylene), trichloroethylene, and other chlorinated solvents and \$0.40 per gallon of petroleum-based solvents and other non-chlorinated solvents.

Table 1: Dry Cleaner Facility Annual Registration Surcharge for Calendar Year 2004

Size of dry cleaner	# of gal. Of chlorinated solvent used	# of gal. Of non-chlorinated solvent used	Annual registration fee
Small	0 to 140	0 to 1,400	\$500
Medium	141 to 360	1,401 to 3,600	\$1,000
Large	>360	>3,600	\$1,500

Table 2 describes surcharge collections. The annual facility registration fee is calculated based on solvent use during the previous calendar year. The collection of annual dry cleaning facility registration surcharges began on April 1, 2001. Collection of the solvent surcharge began with the April 1, 2001, to June 30, 2001 quarter.

Table 2: Receipts to the DERT Fund ⁽¹⁾

Calendar Year	Dry cleaner Facility Annual Registration Surcharge	Solvent Surcharge	Interest and Penalties	Totals
2000	\$0.00	\$0.00	\$0.00	\$0.00
2001	\$221,500	\$170,208	\$5,955	\$397,663
2002	\$222,150	\$435,859	\$17,886	\$675,895
2003	\$303,126	\$427,880	\$26,892	\$757,898
2004	\$319,488	\$409,292	\$43,179	\$771,959
TOTALS	\$1,066,264	\$1,443,239	\$93,912	\$2,603,415

(1) Source: SAM II Data Warehouse Information

Disbursements from the DERT Fund:

Expenditures of the DERT Fund are used to reimburse participants for the costs of addressing releases of solvents from dry cleaning facilities and to administer the program by collecting the surcharges and guiding and assisting the cleanup activities. Participants are liable for the first twenty five thousand dollars of cleanup related costs as a “deductible”.

Three pilot projects were underway, however, the department suspended these projects based on the outcome of the JCAR hearing. The participants had not begun any work and the department had not received enough information to submit a request for reimbursement of cleanup activities. For this reason, no disbursements for cleanup costs have been made. We anticipate \$250,000 to be paid out at these pilot project sites in calendar year 2005.

Table 3: Expenditures of the DERT Fund ⁽¹⁾

	Calendar Year 2000 ⁽²⁾	Calendar Year 2001 ⁽²⁾	Calendar Year 2002 ⁽²⁾	Calendar Year 2003	Calendar Year 2004
Salaries and Wages	\$0.00	\$0.00	\$1,162.59	\$77,270.55	\$106,083
Expense and Equipment	\$0.00	\$0.00	\$0.00	\$14,994.73	\$59,642
Fringe, etc. ⁽⁴⁾	\$0.00	\$0.00	\$2,350.26 ⁽³⁾	\$35,655.12	\$73,437
Depreciation Expenses	\$0.00	\$0.00	\$0.00	\$237.26	\$1,561
TOTAL COSTS	\$0.00	\$0.00	\$3,512.85	\$128,157.66	\$240,723

(1) Source: SAM II Data Warehouse Information

(2) RSMo, Section 260.925 prohibited expenditures from the DERT Fund until on or after July 1, 2002

(3) House Bill 1115, Section 15.220, RSMo, authorized a transfer of \$1,289 out of the State Treasury on May 6, 2002, chargeable to various funds, such amounts as are necessary for allocation of costs to other funds in support of the state's central services, to the General Revenue Fund.

(4) Fringe amount includes OASDI, Retirement Sys, Deferred Comp, MCHCP, Cost Allocation Plan (OA), Cost Allocation (DNR), State Office Bldg M&R, etc.

Actual Fund Balance as of December 31, 2004 was \$2,235,970.

Eligibility for Funding:

The owner or operator of an active dry cleaning facility or the owner or past operator of an abandoned facility can apply for eligibility for the DERT Fund. Laundry facilities located in prisons, government entities, hotels, motels, and industrial laundries are specifically exempt from eligibility to and requirement of the DERT Fund, according to the statute. Based on the passage of new legislation, dry cleaning facilities using non-chlorinated solvents will be exempt from the DERT Fund.

Application and Claim Procedures:

The department has prepared a tool kit containing materials regarding the DERT Fund to be made available during upcoming DERT Fund seminars throughout the state. These seminars will be held in the spring of 2006. The discussion at these seminars will include topics such as:

- What is the DERT Fund?;

- How to register an active dry cleaning facility;
- Process of conducting investigations and corrective actions; and
- Application, claim and reimbursement procedures.

The tool kit and other materials concerning the DERT Fund will be made available in 2006 on the DERT Fund Web site at www.dnr.state.mo.us/alpd/hwp/hwpvcp-dryclean.htm.

The Prioritization of Sites for Expenditures from the Fund:

Reimbursement of the DERT Fund monies will be accomplished based on the site prioritization method described in Section 260.910, RSMo.

The rulemaking proposes to allocate DERT Fund monies to prioritized sites in the following proportions: High priority sites: 60%; Medium priority sites: 30%; Low priority sites: 10%. In any fiscal year, if the funding allocation in any priority category is not used, those funds may be reallocated to other priority categories, starting with any high priority sites and followed by medium and then low priority sites.

Sites applying to the program must have one soil, groundwater, or surface water sample that exhibits contamination of a dry cleaner solvent that is in excess of the department cleanup levels.² This initial assessment will allow the department to determine the eligibility of the site in the DERT Fund. Some sites will provide enough information during the application process to receive a ranking score. Other sites will require additional information before a ranking score can be determined. If the site has not provided enough information to have a ranking score determined, the department will direct the owner or operator to conduct the necessary assessments to determine a ranking score. The ranking is to be based on such factors as environmental contamination, potential economics, potential receptors, risk based remediation parameters, site history, threat to drinking water sources, threat to off-site properties, etc.

The department will post a priority list of dry cleaning sites that have applied to the DERT Fund on the web site. The draft prioritization form is currently under review by the stakeholder rule work group. This form has also been posted on the web at www.dnr.mo.gov/alpd/hwp/dert/dert-rules/rules.htm for comments.

Extent of Corrective Action:

The department reviewed 12 on-going remediation sites at eligible abandoned dry cleaning facilities enrolled in the Brownfields/Voluntary Cleanup Section and chose three sites to participate in a pilot project. The sites were chosen based on data that indicated that these sites would score as high priority sites based on established criteria.

The three sites are listed below with a brief report on the status of investigation and remedial activities.

1. Tri States - Boonville, Springfield, MO

The DERT Fund staff met with the owner's consultant, Environmental Works, and the participant agreed to be involved in the pilot project. The owner has submitted a work plan for further remedial work and has submitted a request for proposal to various companies to do injection of reductive de-chlorination at the site. The remedial work plan and cost estimate have been reviewed and approved and the department is awaiting the proposal and cost estimate for conducting reductive de-chlorination at the site.

2. Tri States - East Trafficway, Springfield, MO

The DERT Fund staff met with the owner's consultant, Environmental Works, and the participant agreed to be involved in the pilot project. The site is contaminated with tetrachloroethylene (PCE) in soil and groundwater. The department has requested an additional work plan for some deep groundwater wells to complete the delineation of the extent of contamination and finish the investigation phase at the site. Once the site is delineated then a remedial action plan can be submitted by the owner's consultant.

3. Kingshighway Retail - Sikeston, MO

The department met with Bank of America representatives and their consultant on June 26, 2004. This site has both PCE contamination in groundwater and petroleum contamination in soils that exceed the department's default target levels. The site requires additional investigation that includes deep wells to investigate PCE contamination in groundwater. The consultant proposed submitting some alternatives to deep wells at the site. The DERT Fund staff and BVCP Project managers met and discussed the site. After review of the file, the conclusion is that deep wells to the first confining strata are necessary because of the chemical properties of PCE. There is also Naptha contamination in soil that must be addressed as part of a remedial action plan. The department requested a work plan for the installation of deep groundwater wells to the first confining strata to complete the delineation of PCE contamination in groundwater.

These three pilot projects were suspended by the department director given the outcome of the September 16, 2004 JCAR Hearing. These projects remain on hold as of the writing of this report.

The department currently has 15 former and active dry cleaning facilities enrolled in the Brownfields/Voluntary Cleanup Program. These site may be eligible to receive reimbursement for cleanup activities under the DERT Fund.

Compliance with Surcharges:

The department identified several dry cleaning facilities and solvent suppliers who have not submitted back surcharges. These facilities where identified through helping facilities fill out registration forms and reviewing solvent supplier reports. Several of

these facilities and solvent suppliers had not submitted the required surcharges for several registration and reporting periods.

The department recognized that sudden notification about the need to pay a large amount in a relatively short period of time could create a hardship on small businesses. Accordingly, the department offered to work out a reasonable payment plan for past due surcharges with dry cleaning facilities and solvent suppliers that had past due surcharges. This payment plan will allow the dry cleaning facility or solvent supplier to spread payments out over time. If a reasonable payment plan could be reached, the department agreed to suspend penalties or interest allowed under RSMo 260.935.

A key feature of the DERT Fund is that dry cleaners who pay into the fund, and are in compliance with the law, are eligible to receive funding for environmental cleanups from the DERT Fund. Consequently, it is in everyone's interest to assist businesses in coming into compliance with the law so that they are covered by the fund.

The table below indicates the compliance rate for annual dry cleaning facility registration surcharges. Failure to pay the annual dry cleaning facility registration surcharges represents 90-95% of the violations that occur in the DERT Fund.

Table 4: DERT Fund Dry Cleaning Facility Compliance

Calendar Year	Number of Active Dry Cleaning Facilities	Sites Registered	Percent Compliance with Annual Facility Registration
2004	459	287	62.53

As of December 2004, there were 296 facilities in the Conference, Conciliation and Persuasion (CC & P) process. Of this number, 54 have been resolved, 69 are still in some phase of CC & P, and 173 have been referred to the HWP Compliance/Enforcement Section.

Table 5: DERT Fund issues referred to the Hazardous Waste Program's Compliance/Enforcement Section

Calendar Year	NOV's issued	Facilities Referred to Compliance/Enforcement	Facilities Referred to Attorney Generals Office	Facilities Returned to Compliance
2004	224	173	0	54

Outreach Activities:

Two months from when the DERT Fund law became effective on August 28, 2000, the department published a notice in the *Missouri Register* about the DERT Fund. In January 2001, the department mailed registration forms to all known dry cleaners. The department subsequently sought to inform all dry cleaners of the 2000 law and its registration requirements, resulting in a wider mailing of additional notification letters and registration information in January 2002 and January 2003. In March 2001, the department mailed a letter (copy enclosed) to 26 solvent suppliers indicating when the requirements for solvent suppliers became effective. This included a copy of Section 260.940, RSMo, the October 1, 2000, notice filed in the *Missouri Register*, and a solvent surcharge calculation sheet and report.

Additional efforts to inform dry cleaning facilities and solvent suppliers of the new law included conducting mass mailings of dry cleaning facilities provided by the dry cleaning associations, yellow page listings, internet searches, the department's Outreach and Assistance Center, the Department of Revenue, the Secretary of State's Office, environmental consultants and organizations, banks and lending institutions, municipalities and local governmental organizations.

The department conducted additional mass mailings, public service announcements, phone calls, and web announcements to dry cleaning facilities, environmental consultants and organizations, banks and lending institutions, municipalities and local governmental organizations of the statutory deadline date of July 1, 2004, for entering a abandoned site in the DERT Fund.

As a result of these efforts, the department has developed a database of 2,500 dry cleaning sites. This includes active dry cleaning facilities, "dry stores" (facilities that collect garments and transfer them to another facilities for cleaning), and abandoned dry cleaning facilities.

The department has posted a Web site that provides information and answers to questions about the DERT Fund. This web site can be viewed at www.dnr.state.mo.us/alpd/hwp/hwpvcp-dryclean.htm. This web site will have information added to it periodically as the rulemaking and program development processes are finalized.

The department distributed the first DERT newsletter on April 20, 2004. This newsletter will be regularly distributed to dry cleaning facilities in the future. This newsletter is intended to keep the industry up to date on issues involving the industry, the DERT Fund, and cleanup efforts at active and abandoned dry cleaner sites.

The department will hold several meetings regarding the DERT Fund. The discussions at these seminars will include topics such as: What is the DERT Fund, what is the process of conducting investigations and corrective actions and the application, claim and reimbursement procedures. Seminar dates in various locations around the state, the tool kit and other materials concerning the DERT Fund will be made available on the DERT Fund Web site at www.dnr.state.mo.us/alpd/hwp/hwpvcp-dryclean.htm., in 2006._

The department is a member of the State Coalition for the Remediation of Drycleaners (SCRD), which is comprised of states that have formal dry cleaner cleanup programs. The SCRCD is funded by the United State Environmental Protection Agency Technology Innovation Office through the National Groundwater Association. This coalition meets once a month, via conference call or meeting, to discuss issues related to dry cleaner program administration and technical site investigation or remediation topics. This coalition serves as an invaluable asset for Missouri as the department develops and manages the DERT Fund and begins site assessments and remediation of dry cleaner sites.

References

¹ State Programs To Clean Up Drycleaners. Schmidt, Robin, R. DeZeeuw, L. Henning and D. Trippler. June 2001. State Coalition for Remediation of Drycleaners. <http://www.drycleancoalition.org/survey/>

² Cleanup Levels for Missouri (CALM), Missouri Department of Natural Resources, Revision of September 2001

² Missouri Risk Based Corrective Action (MRBCA) Process for Petroleum Storage Tanks, Missouri Department of Natural Resources, January 2004